

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

RONALD NAPOLEON WOLFE, SR.,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED

September 17, 1999

No. 213312

Livingston Circuit Court

LC No. 97-9961 FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARIE ELIZABETH WOLFE,

Defendant-Appellee.

No. 213313

Livingston Circuit Court

LC No. 97-9962-FH

Before: Gribbs, P.J., and Kelly and Hood, JJ.

GRIBBS, J. (*dissenting*).

I respectfully dissent. I would reverse the trial court's grant of defendants' motion to suppress.

This case involves a search of defendants' property that was conducted on December 23, 1996. Detective Alan Perry of the Livingston County Sheriff's Department received information from informants William Harp and Harold VanPatten implicating defendants in five different theft offenses; theft of hay bales, theft of building materials, theft of roofing materials, theft of golf carts, and theft of horses. In addition, Perry received information that defendant may have engaged in insurance fraud. Perry presented the information he received to an assistant prosecutor, who drafted an affidavit for search warrant. On December 23, 1996, the affidavit was presented to Judge Michael Hegarty, who signed a search warrant authorizing the search of defendants' entire premises, including the house. The

items to be seized in the search included documents relating to ownership or occupancy of the house, insurance records, bales of hay, golf carts, records relating to building materials, shingle and building material samples, photographs, records relating to the purchase, ownership or registration of firearms, records relating to the possession, ownership or registration of vehicles, and records or evidence relating to horse ownership, sales or veterinary treatment. The officers knew, from information received from the informants, that there was a gun vault hidden behind shelves in the basement. During the search of defendants' house, the officers found the set of false shelves in the basement which covered the door to a gun vault. Police obtained the combination to the lock on the vault, then opened the door and entered, finding numerous guns and a marijuana growing operation.

At the hearing on defendants' motions to suppress, a number of inconsistencies concerning the issuance and content of the warrant were brought to light. The trial court issued an opinion on June 19, 1998, in which it found that the affidavit contained a number of statements made with reckless disregard for the truth. Even redacting these statements, however, the trial court found that the affidavit gave sufficient facts to show probable cause to believe that defendant Ronald Wolfe had committed all offenses alleged, except for insurance fraud. In addition, the trial court concluded that although it did not believe Perry's testimony about being sworn by Judge Hegarty in person rather than by telephone, it found that Perry had sworn to the affidavit, relying on Judge Hegarty's testimony about his strict practice in swearing individuals. Although the court found probable cause to believe that most of the offenses alleged in the affidavit had been committed, it found no probable cause in the affidavit to search in the house for any of the items listed. Accordingly, it concluded that the marijuana must be suppressed.

I would find that the trial court erred in granting the motion to suppress. A search warrant may issue only on a showing of probable cause, supported by oath or affirmation. *People v Sloan*, 450 Mich 160, 166-167; 538 NW2d 380 (1995). Probable cause exists when the facts and circumstances would justify a reasonable person in concluding that there is a fair probability that identifiable objects will be found at the present time in a certain identifiable place. *People v Russo*, 439 Mich 584, 605, 607-608; 487 NW2d 698 (1992); *People v Dowdy*, 211 Mich App 562, 568; 536 NW2d 794 (1995). The affidavit must contain facts within the knowledge of the affiant, as distinguished from mere conclusions or beliefs. *Sloan, supra*, 169-170, citing *People v Rosborough*, 387 Mich 183, 199; 195 NW2d 255 (1972). The magistrate must then decide whether to issue a warrant based on the contents of the affidavit. *Id.*; MCL 780.653; MSA 28.1259(3).

In reviewing a magistrate's decision to issue a search warrant, the warrant and underlying affidavit are to be read in a commonsense and realistic manner. *Russo, supra*, 604. A magistrate's determination of probable cause should be given great deference by the reviewing court. *Illinois v Gates*, 462 US 213, 236-237; 103 S Ct 2317; 76 L Ed 2d 527 (1983); *Russo, supra*, 603-604. Courts should not invalidate warrants by interpreting affidavits in a hyper technical, rather than a common sense manner. *Id.* If the reviewing court concludes that an affiant knowingly and intentionally, or with reckless disregard for the truth, either inserted false material or omitted material information from the affidavit, the reviewing court may redact the improper information and determine whether probable cause exists based on the remaining information. See *Franks v Delaware*, 438 US 154, 171-172; 98

S Ct 2674; 57 L Ed 2d 667 (1978); *People v Stumpf*, 196 Mich App 218, 224; 492 NW2d 795 (1992).

Having reviewed the record, I would find that there was probable cause to support the claim of insurance fraud. The finding of insurance fraud is a pivotal threshold question in this case. If there was probable cause to issue a warrant on this basis, which essentially involves a “paper” crime, it is axiomatic that there was a fair probability that any records relating to defendant’s involvement in insurance fraud would be found in defendant’s residence. Once lawfully inside the residence, common sense dictates that the most likely place for the officers to search for records of unlawful activity would be in the secret gun vault.

The affidavit related what Perry had learned directly from named informants, Harp, VanPatten, and VanPatten’s brother. Harp and VanPatten knew defendant and had been to defendants’ house many times. Harp told Perry that defendant dropped off a shipment of windows at his house and asked that he store them. Within a month, defendants’ son began delivering these windows to the residence defendants were constructing. VanPatten, who worked on the house, said the deliveries were made piecemeal although the house was framed in and ready for the windows to be installed. Defendant told VanPatten’s brother that he made an insurance claim, reporting the windows stolen, and received money for the windows.

The informants here were named and spoke with personal knowledge of the information, which forms an appropriate basis for probable cause. MCL 780.653; MSA 28,1259(3). The named informants’ information in this case was quite detailed, some of it was confirmed by police investigation, and the warrant was properly sworn. Even redacting those statements in the affidavit allegedly made with reckless disregard for the truth, I believe probable cause exists to support the search, and that the trial court erred in finding the magistrate lacked probable cause to issue the warrant. Further, once the police were conducting a valid search of defendants’ residence, I would find that the marijuana, unexpectedly discovered in plain view during their lawful search, was also admissible.

I would also find that the affidavit gave ample indication that evidence relating to the various thefts could be found in the house. The windows that were the subject of the insurance fraud investigation were allegedly installed in defendants’ residence, and the warrant also authorized a search for insurance and ownership records for the allegedly stolen items, proof of ownership for any weapons found, records concerning sales or veterinary care for the stolen animals, and photographs. It was reasonable to believe that the paper trail of defendants’ alleged crimes would be found in defendants’ residence, and the hidden gun vault was the most likely place to search for them. The warrant also contained an allegation that defendant and his son had guns in their possession during the hay theft and that defendant frequently carried a gun on his person. Because defendant was a licensed gun dealer who would likely have guns on the premises, and because he was alleged to have used the guns unlawfully, common sense dictates that the police would verify the location and legality of any weapons found during the search.

I would conclude that the evidence was improperly suppressed and reverse the decision of the trial court.

/s/ Roman S. Gibbs